

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KEVIN MURRAY,

Plaintiff,

-against-

STATE FARM INSURANCE COMPANY,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT
★ OCT 10 2006
P.M.
TIME A.M.
(S) *Kevin*

**REPORT AND
RECOMMENDATION
05 CV 5726 (SJF)(LB)**

BLOOM, United States Magistrate Judge:

This matter was referred to the undersigned for all pretrial matters. This Report and Recommendation is made pursuant to 28 U.S.C. § 636(b). For the following reasons, it is respectfully recommended that the complaint should be dismissed for plaintiff's failure to serve the summons and complaint upon defendant within 120 days of filing as required by Rule 4(m) of the Federal Rules of Civil Procedure.

BACKGROUND

On December 8, 2005, plaintiff, proceeding *pro se*, paid the filing fee and filed the instant complaint alleging employment discrimination. By order dated December 20, 2005, the Court directed plaintiff to serve the defendant by April 7, 2006. The order also notified plaintiff that "[i]f service is not made upon the defendant by April 7, 2006 or plaintiff fails to show good cause why such service has not be effected, I will recommend that the action be dismissed without prejudice." Plaintiff was warned again in an Order dated May 23, 2006 which stated "[i]f service is not made upon the defendant or plaintiff fails to show good cause why such service has not been effected by June 23, 2006, I will recommend that this action be dismissed." To date, plaintiff has not contacted the Court.

clm

DISCUSSION

Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure:

[i]f service of the summons and complaint is not made upon a defendant within 120 days after filing of the complaint, the court, upon motion, or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time provided that if plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). Where a *pro se* plaintiff fails to properly serve process on defendant within 120 days of filing the complaint, the Court may dismiss the action sua sponte pursuant to Rule 4(m) after giving notice to the plaintiff. Thompson v. Maldonado, 309 F.3d 107 (2d Cir. 2002).

Here, the Court warned plaintiff in two separate orders that his failure to properly serve defendant with the summons and complaint would result in dismissal of the action. Plaintiff has not filed proof of service or contacted the Court regarding his failure to effect service.

CONCLUSION

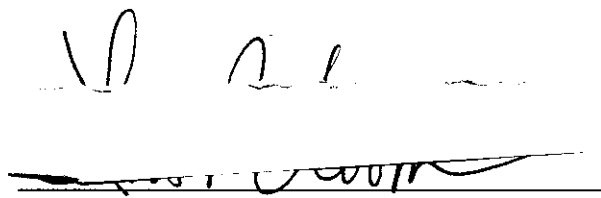
For the foregoing reasons, the instant action should be dismissed without prejudice for failure to properly serve process upon defendant within 120 days as prescribed by Rule 4(m) of the Federal Rules of Civil Procedure.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of

the Court. Any request for an extension of time to file objections must be made to the District Judge within the ten day period. Failure to file a timely objection to this Report generally waives any further judicial review. Marcella v. Capital District Physician's Health Plan, Inc., 293 F.3d 42 (2d Cir. 2002); Small v. Secretary of Health and Human Services, 892 F.2d 15 (2d Cir. 1989); see Thomas v. Arn, 474 U.S. 140 (1985).

SO ORDERED:


LOIS BLOOM
United States Magistrate Judge

Dated: October 10, 2006
Brooklyn, New York